

## Wage and Hour Division, Labor

## § 553.1

hours worked and submit such record to the employer.

### PART 553—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

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SOURCE: 52 FR 2032, Jan. 16, 1987, unless otherwise noted.

#### Subpart A—General

##### INTRODUCTION

##### § 553.1 Definitions.

(a) *Act* or *FLSA* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219).

(b) *1985 Amendments* means the Fair Labor Standards Amendments of 1985 (Pub. L. 99–150).

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(c) *Public agency* means a State, a political subdivision of a State or an interstate governmental agency.

(d) *State* means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other Territory or possession of the United States (29 U.S.C. 203(c) and 213(f)).

### § 553.2 Purpose and scope.

(a) The 1985 Amendments to the Fair Labor Standards Act (FLSA) changed certain provisions of the Act as they apply to employees of State and local public agencies. The purpose of part 553 is to set forth the regulations to carry out the provisions of these Amendments, as well as other FLSA provisions previously in existence relating to such public agency employees.

(b) The regulations in this part are divided into three subparts. Subpart A interprets and applies the special FLSA provisions that are generally applicable to all covered and nonexempt employees of State and local governments. Subpart A also contains provisions concerning certain individuals (*i.e.*, elected officials, their appointees, and legislative branch employees) who are excluded from the definition of “employee” and thus from FLSA coverage. This subpart also interprets and applies sections 7(o), and 7(p)(2), 7(p)(3), and 11(c) of the Act regarding compensatory time off, occasional or sporadic part-time employment, and the performance of substitute work by public agency employees, respectively.

(c) Subpart B of this part deals with “volunteer” services performed by individuals for public agencies. Subpart C applies various FLSA provisions as they relate to fire protection and law enforcement employees of public agencies.

### § 553.3 Coverage—general.

(a)(1) In 1966, Congress amended the FLSA to extend coverage to State and local government employees engaged in the operation of hospitals, nursing homes, schools, and mass transit systems.

(2) In 1972, the Education Amendments further extended coverage to employees of public preschools.

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(3) In 1974, the FLSA Amendments extended coverage to virtually all of the remaining State and local government employees who were not covered as a result of the 1966 and 1972 legislation.

(b) Certain definitions already in the Act were modified by the 1974 Amendments. The definition of the term “employer” was changed to include public agencies and that of “employee” was amended to include individuals employed by public agencies. The definition of “enterprise” contained in section 3(r) of the Act was modified to provide that activities of a public agency are performed for a “business purpose.” The term “enterprise engaged in commerce or in the production of goods for commerce” defined in section 3(s) of the Act was expanded to include public agencies.

### SECTION 3(E)(2)(C)—EXCLUSIONS

#### § 553.10 General.

Section 3(e)(2)(C) of the Act excludes from the definition of “employee”, and thus from coverage, certain individuals employed by public agencies. This exclusion applies to elected public officials, their immediate advisors, and certain individuals whom they appoint or select to serve in various capacities. In addition, the 1985 Amendments exclude employees of legislative branches of State and local governments. A condition for exclusion is that the employee must not be subject to the civil service laws of the employing State or local agency.

#### § 553.11 Exclusion for elected officials and their appointees.

(a) Section 3(e)(2)(C) provides an exclusion from the Act’s coverage for officials elected by the voters of their jurisdictions. Also excluded under this provision are personal staff members and officials in policymaking positions who are selected or appointed by the elected public officials and certain advisers to such officials.

(b) The statutory term “member of personal staff” generally includes only persons who are under the direct supervision of the selecting elected official